

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

GAIL C. CLARK,

Plaintiff,

v.

JO ANNE B. BARNHART,  
Commissioner of Social security,

Defendant.

Case No. C04-5237 FDB

ORDER ON ATTORNEY FEES

This matter comes before the Court on Plaintiff's motion for authorization of attorney fees under 42 U.S.C. § 406(b). This court has jurisdiction to award attorney fees for work before this court under 42 U.S.C. § 406(b). Straw v. Bowen, 866 F.2d 1167 (9<sup>th</sup> Cir. 1989). Plaintiff must apply to the Social Security Administration for an award of fees for representation at the administrative level. 42 U.S.C. § 406(a); Stenswick v. Bowen, 815 F.2d 519 (9<sup>th</sup> Cir. 1987). An attorney fee of \$5,300.00 has been paid for representation in the administrative proceedings.

Previously, this Court awarded Plaintiff's counsel \$6,058.68 pursuant to the Equal Access to Justice Act (EAJA). Plaintiff's counsel now petitions for a gross fee of \$11,958.32. Plaintiff has subtracted from 25% of the past due benefits the amount awarded pursuant to the EAJA and

1 requests a net award of \$11,958.32, minus an administrative assessment, for legal services rendered  
2 at the judicial level.

3 The Defendant objects to the request on the basis that the award of attorneys fees under 42  
4 U.S.C. § 406(a) for representation in the administrative proceedings must also be deducted from the  
5 25% of past-due benefits. The Court agrees.

6 Under 42 U.S.C. § 406(b)(1)(A) the court can only award fees up to the 25 percent withheld  
7 from the past-due benefits. This 25% limit applies to the total of 42 U.S.C. § 406(a) and 406(b) fees  
8 combined. See, Morris v. Social Sec. Admin., 689 F.2d 495, 497-98 (4<sup>th</sup> Cir. 1982); Webb v.  
9 Richardson, 472 F.2d 529, 536 (6<sup>th</sup> Cir. 1972); Dawson v. Finch, 425 F.2d 1192, 1195 (5<sup>th</sup> Cir.  
10 1970). Here, the parties agree that \$18,017.00 equals 25% of Plaintiff's past-due benefits. From  
11 this figure the Court must deduct the § 406(a) fees (\$5,300.00) and the EAJA fees paid to Plaintiff's  
12 counsel (\$6,058.68), for a net fee of \$6,658.32 for § 406(b) fees. Defendant may also deduct an  
13 assessment under 42 U.S.C. § 406(d).


14 ACCORDINGLY,

15 IT IS ORDERED:

16 Plaintiff's Motion for an Award of Attorney's Fees [DKT #25] is **GRANTED IN PART**.

17 Plaintiff is awarded 42 U.S.C. § 406(b) attorney fees in the sum of **\$6,658.32**, minus the §  
18 406(d) administrative assessment.

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20 DATED this 8<sup>th</sup> day of December, 2006.

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24 FRANKLIN D. BURGESS  
25 UNITED STATES DISTRICT JUDGE  
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